2026:BHC-AUG:47357

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 WRIT PETITION NO. 10060 OF 2025

AURANGABAD MUNICIPAL CORPORATION CHH. SAMBHAJINAGAR THR ITS COMMISSIONER

VERSUS

M.S. SUNIL ENTERPRISES THR ITS PROPRIETOR

...

Mr. S.B. Deshpande, Senior Counsel i/b Mr. P.S. Salunke, Advocate for petitioner

Mr. R.R. Sancheti, Advocate for sole respondent

...

WITH

CIVIL APPLICATION NO.4858 OF 2025 IN WP/10060/2025

...

CORAM : ROHIT W. JOSHI, J.

DATE : 05th OCTOBER, 2026

ORDER :

. Present petition is filed in order to assail order dated 01.07.2025 passed by learned 12th Joint Civil Judge Senior Division, Aurangabad below Exh.19 in Arbitration R.D. No.1201/2025. By the impugned order warrant of attachment under Order XXI Rule 54 is issued against C.T.S. Nos.2383, 3167 and 3194 owned by the petitioner for amount of Rs.98,88,488/-.

2 Learned Senior Counsel Mr. S.B. Deshpande appearing for petitioner contends that Darkhast was initially filed before Principal District Judge and was numbered as Regular Darkhast No.3115/2023. He contends that the execution petition was thereafter transferred to the learned Civil Court and after the transfer of the execution petition fresh notice is not served on the petitioner / Corporation. It is contended that in such circumstances the impugned order dated 01.07.2025 is passed without hearing the petitioner. Learned Senior Counsel further contends that the interest of respondent / Decree Holder is adequately safeguarded in view of the fact that pursuant to order dated 11.08.2025 passed by this Court 75% of the amount in terms of the Award dated 13.06.2023 passed by the Micro and Small Enterprises Facilitation Council with Executing Court has been deposited by the petitioner. Learned Senior Counsel, therefore, contends that in the light of the subsequent development it will be appropriate that the application for attachment is directed to be reconsidered by the learned Executing Court.

3 The learned Advocate for respondent / Decree Holder opposes the request. He contends that the Award passed by the Facilitation Council is not challenged by the petitioner under the provisions of Arbitration and Conciliation Act, which is the statutorily prescribed mode for challenging the

Award. Learned Advocate points out that plaint in the civil suit i.e. Regular Civil Suit No.14/2025 filed for challenging the Award is already rejected vide order dated 12.03.2025 passed by the learned Civil Judge Senior Division (Corporation Court), Aurangabad. It is contended that although appeal being Regular Civil Appeal No.93/2025 is filed against the said order of rejection, there is no interim order granting stay to the execution of the impugned Award. It is, therefore, contended that no fault can be found with the order of attachment passed by the learned Executing Court. It is also submitted that an application of withdrawal of the amount is filed before this Court, which should also be considered.

4 In the considered opinion of this Court, since the impugned order is passed without hearing of the petitioner and the petitioner / Judgment Debtor has deposited 75% of the amount, it will be appropriate that the impugned order dated 01.07.2025 is quashed and learned Executing Court is directed to decide the said application for attachment afresh after a fair opportunity of hearing to the petitioner. Accordingly, Writ Petition is **allowed** by quashing and setting aside order dated 01.07.2025 passed by learned 12th Joint Civil Judge Senior Division, Aurangabad on application at Exh.19 in Arbitration R.D. No.1201/2025 and directing the learned Executing Court to decide the said application afresh after affording

opportunity of hearing to both sides.

5 As regards the prayer of withdrawal of amount, since challenge to the Award is now pending before the learned Appellate Court, before whom Regular Civil Appeal No.93/2025 is pending, it will be appropriate that the request for prayer for withdrawal of amount is considered by the Appellate Court. The application for withdrawal of the amount filed by the Decree Holder stands **disposed of** with liberty to file appropriate application before Appellate Court where Regular Civil Appeal No.93/2025 is pending. If such application is filed, learned Appellate Court is requested to decide the same expeditiously and if possible within a period of 30 days from the date of this order.

6 The learned Executing Court is requested to decide the Execution Petition on merits as expeditiously as possible. The pendency of appeal in the absence of any interim order shall not be an impediment for proceeding ahead with the Execution Petition. Amount deposited by the petitioner with this Court be transferred to the learned Executing Court.

(ROHIT W. JOSHI, J.)

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